

Congress of the United States
House of Representatives

Seize the Victory at Hand for a New Democratic Trade Policy
Support the Amended U.S. Peru Free Trade Agreement

Dear Democratic Colleague:

Democrats have been fighting to incorporate worker rights and environmental standards in trade agreements for over a decade.

Early on, how to do this, brought differences within our own ranks. But, we kept discussing the why and the how. We knew that globalization was here to stay, but we were determined to use trade policy as a tool to shape its path to maximize the benefits and minimize the downsides.

Worker rights and environmental standards were the foundation of our position. We knew that in order for globalization to work its benefits must be shared more broadly and in order for this to occur workers must have their basic international rights. Around this issue we united.

It was at the core of our position for a reason. We believed that workers with their basic rights would begin to change the basic power dynamic with developing countries just as it did within our own. This is important to assist nations like Peru, and other Latin American countries, in the development of a strong middle class so severely lacking, for workers in our nation who do not want to compete with other nations whose entities suppress their workers, and for our companies and workers who need middle classes in other nations to buy the goods and services we produce here at home.

We also knew that workers, as part of the trade equation, would fundamentally alter that equation – it would mark the beginning of dramatic change.

In 2001, Charlie Rangel, Bob Matsui and myself consulted within our caucus and with outside organizations to develop trade legislation describing how we would negotiate bi-lateral trade agreements. 165 Democrats voted for this approach. The U.S.–Peru FTA exceeds our negotiating objectives on each and every measure relating to worker rights and the environment.

In 2005, the Democratic Caucus reached near unanimity in our opposition to the CAFTA trade agreement negotiated by the Bush Administration. At the core of the opposition was the wholly inadequate “enforce your own law” standard used for worker rights and environmental standards.

The Peru FTA is not CAFTA. Quite the opposite.

For the first time, the U.S.-Peru FTA incorporates international labor standards in the trade agreement, enforceable like all other provisions. The standards come right from the International Labor Organization's *1998 Declaration on Fundamental Principles and Rights at Work* and include the freedom of association and the right to organize and bargain collectively, and prohibitions on child labor, forced labor, and discrimination in employment.

The same is true as to the environment. For the first time in a bilateral trade agreement there is a requirement for both countries to abide -- with enforceability like all other provisions -- by international environmental standards (Multilateral Environmental Agreements or MEAs). And the Peru FTA has a groundbreaking provision to prevent importation into the U.S. of logs illegally harvested -- preventing competition based on a degradation of the Amazon.

We can lock in this historic breakthrough, or we can turn our back on it. I believe that to turn our back on bringing to fruition the most major transformation in U.S. trade policy in decades, or to be distracted by false or misleading criticisms, would be a terrible mistake for our new Democratic Majority.

This FTA will NOT impact our ability to set high food safety requirements, it will NOT preclude Buy American provisions for the vast majority of state and federal government procurements, it will NOT lock in Peruvian Social Security privatization, it will NOT empower foreign investors to overturn legitimate public welfare laws.

I have also heard concerns about overall enforcement of trade agreements. I will be the first one to criticize the Bush Administration for their failure to enforce trade agreements, their failure to use U.S. trade remedy laws to respond to unfair trade practices and to make other countries play by the rules at the WTO.

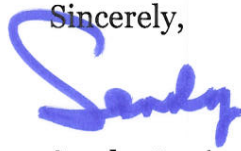
That's why Chairman Rangel and I worked with the Government of Peru to change their legal structure to incorporate the basic international standards before we voted. Also, anyone can file a petition with USTR alleging failure to enforce these important new provisions. If USTR attempts to avoid action on a petition, Congress, with our new majority, has powers of oversight -- including subpoena powers -- with which to pursue enforcement.

Of course, the surest way to enforce anything to our liking is to have a Democrat in the White House (the U.S.-Peru likely won't even go into effect until shortly before there is a new Administration). But, it would be foolish for us to set such a standard and vote against other needed changes to U.S. law because of our concern that this President won't follow through.

I understand that trade is a difficult issue. I have seen firsthand the devastation that bad trade policies can bring to workers, businesses and communities. But, I also know that I can look my own constituents in the eye and tell them that for the first time the new Democratic Majority has placed worker rights and environmental standards in a trade agreement – on equal footing as all other commercial provisions – and that with this accomplishment we have taken the first step to completely change U.S. trade policy.

I hope you will join us in setting U.S. trade policy on a completely new course. I urge your support of the amended U.S. – Peru FTA.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sander", with a large, stylized flourish at the end.

Sander Levin
Member of Congress

The Peru FTA and Labor Standards

Strongest Labor Standards in a Free Trade Agreement

For the first time in U.S. trade policy, Congressional Democrats have ensured that the Peru FTA and future FTA's will incorporate key Democratic priorities:

INCLUSION OF LABOR STANDARDS IN CORE TEXT

A fully enforceable commitment that Peru will adopt, maintain and enforce in its laws and practice the five basic international labor standards:

- Freedom of Association;
- Right to Collective Bargaining;
- Elimination of Forced and Compulsory Labor;
- Abolition of Child Labor; and
- Elimination of Employment Discrimination.

These are the real labor standards that are applied by the ILO; the exact standards Democrats have sought for more than a decade. And Peru has already changed its legal framework to comply with the FTA.

PERU CANNOT LOWER LABOR STANDARDS

The FTA includes a new, fully enforceable, binding commitment prohibiting Peru from lowering labor standards in the future.

The Peru FTA also includes new limitations on “prosecutorial” and “enforcement” discretion. For example, Peru will not be able to defend the failure to enforce laws related to the five basic standards due to resource limitations or decisions to prioritize other enforcement issues.

DISPUTE SETTLEMENT PARITY

The agreement provides for the same dispute settlement mechanisms/penalties as other FTA obligations. If Peru fails to enforce fundamental labor rights, or fails to enforce its labor laws, the U.S. Government can sue Peru for not complying with the Agreement.

Approved by the Committee on Ways & Means. Contact Tim Reif, Staff Director, Subcommittee on Trade, Committee on Ways & Means with questions. (225-6649)

See reverse for comments from labor organizations

Comments on the New Labor Provisions

“The new provisions on workers’ rights and the environment represent significant progress in crucial areas that we have fought together to achieve for many years. These issues have been central to the debate over globalization and its impact on working families, both here in the United States and around the world, and we appreciate the deep commitment and hard work of Chairman Charles Rangel and Chairman Sander Levin in achieving this progress.”

*John Sweeney, President
AFL-CIO*

The UAW strongly supports the provisions on worker rights and the environment that have been included in the Peru FTA. They represent substantial progress in achieving this longstanding objective of the labor movement. We believe these provisions will help to prevent globalization from fostering a race to the bottom...”

*Alan Reuther, Legislative Director
United Auto Workers*

Ways and Means Chairman Charles Rangel and Trade Subcommittee Chairman Sander Levin have negotiated new provisions that represent real progress in the crucial areas of workers’ rights and the environment, which the AFL-CIO has fought to achieve for many years.”

*Bill Samuel, Legislative Director
AFL-CIO*

“I think that in spite of our impatience to have the FTA approved rapidly, we have found in the new majority people who defend their principals, people who defend their social and political convictions...a new concept has been born that enriches the standing agreement and I am sure, that this is the initial step of a world wide new trade policy that takes into account the human face...These issues improve the standing of the agreement. Let it be said that, this could be the beginning of a grand transformation of world trade, a "New Deal".

Peruvian President Alan Garcia

Peru FTA

Facts

Some concerns have been raised regarding investment, food safety, and government procurement under the Peru FTA. The following facts should help to set the record straight.

INVESTMENT

- **A Battle Democrats Fought in 2002.** In 2001-2002, House Democrats fought for and achieved significant changes to protect U.S. environmental and public welfare regulations under U.S. FTAs, including Peru and Panama. These changes **substantially changed the NAFTA text.** For example, these regulations are now presumed not to constitute regulatory expropriations. The new language states, among other things, that:

“Except in rare circumstances, non-discriminatory regulatory actions designed and applied to protect legitimate **public welfare objectives, such as public health, safety and the environment, do not constitute indirect expropriations.**”

- **Democrats Further Clarify Investor Rights This Year.** House Democrats further insisted that the Peru FTA be re-opened to add the following language on investment:

“Agree that foreign investors are **not hereby accorded greater substantive rights** with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement.”

- **The United States Has Not Lost a Single Case in Any Investor-State Dispute under Any Free Trade Agreement.** Not a single dollar has been awarded to an investor in a dispute against the United States under NAFTA since NAFTA entered into force more than 12 years ago (or under any other FTA or bilateral investment treaty, ever).

FOOD SAFETY AND INSPECTION

- **United States Free to Set and Enforce Its Own Food Safety Standards.** The Peru FTA does not subject the United States to *any* new limitations or requirements regarding food safety and inspection. The FTA simply reaffirms the rights and obligations that exist now – and have existed for over a decade – under the WTO agreements.

- Even under WTO rules, the United States is free to reject Peru's safety standards if those standards are not at least as high as U.S. standards.
 - **For example, the United States has never recognized Mexico's meat inspection system as being equivalent to the U.S. system.** No international agreement requires the United States to accept imported food that fails to meet U.S. standards.
- **The United States Does Not Need an FTA with Peru to Enhance its Food Safety System.** It can do that unilaterally – and can apply it broadly, including to imports from China.

GOVERNMENT PROCUREMENT

- The Peru FTA contains major carve-outs that **preserve a substantial portion of “Buy America”** benefits for U.S. businesses at the local, state and federal levels:
 - All **small and minority business set aside programs** are exempted.
 - **States are exempt unless an individual state chooses to opt in.** Only **eight** U.S. states have “opted in” to the procurement chapters of the Peru and Panama FTAs.
 - **Key procurements are excluded from the FTA.** “Buy America” will continue to apply to, for example, mass transit projects (i.e., federal highway construction must use U.S. steel), Defense Department procurements of “Berry Amendment” items like apparel and tools, and carve outs for some purchases by special entities, such as the Tennessee Valley Authority and rural power generation authorities.
 - **Dollar thresholds limit the scope of coverage.** Buy America still applies to procurements below certain dollar thresholds (state contracts below \$480,000 and federal contracts below \$60,000).
- **Opening USG procurement means that our producers get access to foreign procurement.** Since 1979, Congress has sought to open foreign procurement to U.S. producers and workers through international government procurement agreements. It is unlikely that Peru has very many companies that can compete for U.S. procurement contracts. However, U.S. companies can compete in these foreign markets.